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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,554	01/09/2006	Fabian Kollmann	D4700-00399	5082
8933	7590	11/01/2006	EXAMINER	
DUANE MORRIS, LLP IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			MAHONE, KRISTIE ANN ETTE	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/538,554	KOLLMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kristie A. Mahone	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 January 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-32 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 09 January 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/15/05 &amp; 1/9/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on December 13, 2002. It is noted, however, that applicant has not filed a certified copy of the 10260211.5 application as required by 35 U.S.C. 119(b).

### *Specification*

2. The disclosure is objected to because applicant has not included the proper headings in the disclosure. See 37 CFR 1.77(b). Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required.

Claim 30 recites the limitation "wherein the axis about which the holder may be rotated intersects the *shower head* near a centroid of *the shower head*" [emphasis added]. The specification provides support for an axis which intersects the *housing of the shower head* near its centroid; i.e. Claim 11. Note, Specification page 3, paragraph 3. As noted below, Examiner construes "shower head" and "housing of the shower head" synonymous and interchangable,

***Drawings.***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 16 (Figure 4).
5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Claims 3-7,11,16-17, and 30 recite various pivot axes and/or pivot angles, which are not illustrated. Therefore, the axes and angles must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

6. Claim 5 is objected to because of the following informalities—the term “wherein” appears to have been mistakenly omitted from line 1 during amendment. The claim, as currently written, is nonsensical. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 29 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 29 is directed to a tensioning component which may be used for gripping the arm while the shower head is detached. While the disclosure mentions a tensioning component for connecting the jaws of the holder, it fails to state or teach one of ordinary skill in the art how such component may grip the arm when the shower head is removed. Without adequate support in the specification and illustration in the drawings, one skilled in the art could not make or use the invention without undue experimentation.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 3-7, 11-13, 16-17, 20, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claims 15 and 26-27 recite the limitation "the shower head." There is insufficient antecedent basis for this limitation in the claims. Claim 1 does not positively recite or claim a shower head.

12. Claims 12-13, 18, 20, 23-24, 27, and 30-31 recite the limitation "the housing of the shower head." There is insufficient antecedent basis for this limitation in the claims.

For the purpose of examination, Examiner construes that "shower head" and "housing of the shower head" as synonymous and interchangeable because the specification does not clearly distinguish the "shower head" and "housing of the shower head".

13. Claims 21-24, 29, and 31 recite the limitation "the jaws." There is insufficient antecedent basis for this limitation in the claim; i.e. claim 19 does not recite "jaws." Apparently, claims 21 and 22 should depend from claim 18 which recites "at least two jaws." For the purpose of examination, claims 21 and 22 are treated depending from claim 18.

14. Regarding claims 16-17 and 29, the phrase "may be" renders the claims indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1-2,4-5,11, 17,25-26, 30, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Fornara (5,855,348). Regarding claim 1, Fornara discloses a support (10) for a detachable shower head (52) comprising: a mounting fixture (12); a wall mounting arm (14;47) jutting out of the mounting fixture; and a holder (48) for the shower head (52) attached to the wall mounting arm in a vicinity of an end thereof that is opposite from the mounting fixture (Fig. 3).

It should be noted that the recitation “*for a detachable shower head*” has been fully considered, but not been given patentable weight because it merely recites an intended use and the structural limitations in the body of the claim are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Regarding claim 2, Fornara discloses that the arm is pivoted on the mounting fixture and the holder is pivoted on the arm (Col. 3, lines 17-42).

Regarding claims 4-5, and 17, the pivot axis of Fornara’s arm (a) is parallel to the surface of the wall (P), horizontal, lies in a horizontal plane (perpendicular to 4-4), and

situated in a vicinity of the end of the arm that is coordinated with the mounting fixture (12) (Figs. 1 &4).

Regarding claims 11 and 30, the pivot axis of the holder intersects the shower head (housing of the shower head) relatively "near" centroid thereof (e.g. at 50).

Regarding claims 25 and 32, as shown in Fig.2, Fornara's arm (14,47) is configured in a form of a curved rod, forming a continuous unit out to its far end, on whose far end the holder (48) for the shower head is arranged.

Regarding claim 26, shower head (52) is configured in the form of a hand-held shower head (Fig 3) and the end engaging seat (50) is capable of functioning as a grip (e.g. being held by a human hand).

17. Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Larsson (4,174,822). Larsson discloses all of the claimed structural limitations of the shower support of claim 1, namely a mounting fixture (13); a wall mounting arm (10) and a holder (11) for a shower head (12). Larsson's arm (10) is configured in the form of a fork, wherein the holder (11) is arranged between the tines of the fork (15) (Fig.2). As shown, Larsson's arm forks approximately midway along its length (i.e. at 20).

18. Claims 12-14, and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Gransow et. al. (6,442,775).

Gransow discloses a support comprising a mounting fixture (1); wall mounting arm (2a-2b) jutting out of the mounting fixture; and a holder (22) for the shower head (4a-b) (Figs 1-4). It should be noted that the recitation "for a detachable shower head" has not been given patentable weight because it merely recites an intended use and the

structural limitations in the body of the claim are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Regarding claims 12-14, Gransow's holder (22) engages a location on the housing of the shower head (4a/b) that is not recognizable as such based on its shape at that location; i.e. 4a/4b do not appear to grippers or other shape configurations designed for ergonomic holding by a human. Furthermore, Gransow's holder (22) acts by means of "interference fit"; i.e. shower head is fastened into socket 22 by pressing. Regarding claim 14, Gransow's holder engages the shower head at an "outer perimeter." (See Fig 2).

Regarding claim 27, as shown in Figure 2, the housing of the shower head (4a/b) is disk shaped.

Regarding claim 28, Gransow discloses a "hose" (interior of 2) leading to the showerhead (4a-b) is connected to the mounting fixture. (See Col. 4, lines 6-27).

19. Claims 18-24, 29, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson (4,071,998). With respect to independent claim 1, Peterson discloses a support for a detachable shower head comprising a mounting fixture (circular member mounted to 18, receiving 16); a wall-mounting arm (16) jutting out of the mounting fixture; and a holder (10) for a shower head (12). (Fig. 7)

Regarding dependent claim 18, the holder (10) has at least two "jaws" (72,74) for engaging the housing of the shower head. (Fig. 7)

Regarding claims 19-20, as schematically shown in Figures 5-7, the holder engages the housing of the shower head /shower head housing at two locations that are approximately opposite one another and diametrically opposed.

Regarding claim 21, Peterson's jaws are configured to be tensioned toward one another to allow the shower head to be held. Col. 5, lines 44-47.

Regarding claims 22 and 29, Peterson's jaws are joined by a tensioning component; i.e. the tensioning component constitutes the arcuate inner surface of the jaw members. (Figs. 6-7). With respect to depending claim 29, because the phrase "may be" appears in the claim, Examiner is of the position that the limitation "used for gripping the arm..." is not necessary to meet the claimed "tensioning component." (See ¶12, *supra*).

Regarding claim 23, the tensioning component is configured such that contact between it and the housing of the shower head takes place over an "extended area," e.g. lengthwise along 34 or 36. (Fig. 7).

Regarding claim 24, as schematically shown in Figure 6, the tensioning component is configured such that there is "gap" between it an the housing of the shower head.

Regarding claim 31, as shown in Figure 7, Peterson's tensioning component is configured such that it does not contact the housing of the shower head at any location thereon; e.g. portion 22.

***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 3,6-7, and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fornara. As explained above, Fornara discloses all of the claimed structural limitations of support set forth in Claims 1 and 6 (see above).

Regarding claims 3 and 16, Fornara does not expressly specify that the pivot axis for the holder (48) is approximately orthogonal to a longitudinal axis of the wall mounting arm. Instead, at Col. 3 lines 32-42, Fornara discloses that the holder (48) is "angularly adjustable" on the wall mounting arm (at 47). One of ordinary skill in the art would have recognized that for the holder to be angularly adjustable on the arm, as expressly recited by Fornara, the pivot axis of the holder would be approximately orthogonal to a longitudinal axis of the wall mounting arm, said longitudinal axis running parallel to 14. Accordingly, it would have been obvious to one skilled in the art at the time the invention was made to have made the holder pivot about the axis recited in Claims 3 and 16 in view of Fornara.

With respect to claim 16, it is noted that, the holder (48) together with the shower head (52) "may be" pivoted about the claimed pivot axis. (See Fig. 3).

Regarding claim 6, Fornara does not specify that the pivot axes of the wall mounting arm and holder are parallel to one another. As explained above, a holder with a pivot axis approximately orthogonal to a longitudinal axis of the wall mounting arm would have been obvious in view of Fornara. Fornara's wall mounting arm (14,47) pivots about pivot axis (a) which is also orthogonal to a longitudinal axis of the wall mounting arm. (See Fig. 1 and 4). One of ordinary skill in the art would have recognized that the pivot axis of the holder and the pivot axis of the wall mounting arm (a) are parallel to one another. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to make the pivot axes of the holder and mounting are parallel to one another in view of Fornara.

Regarding claim 7, Fornara also discloses that wall mounting arm is pivots around axis a by about 180 degrees, as shown in Fig. 1 (Col. 3, 18-22). Fornara does not explicitly address the dimensions of pivot angle of the holder relative to the wall mounting arm, but notes that the holder is "angularly adjustable" about member 47. (Col. 3, lines 32-42). One of ordinary skill in the art would have recognized that configuring Fornara's support such that the maximum pivot angle of the holder at least equals the maximum pivot angle of the wall mounting arm (i.e. 180°) would enhance the support's suitability for the intended use of the user; i.e. more divergent array of jets. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Fornara such that the maximum pivot angle of the holder at least equals the maximum pivot angle of the arm because such

modification would have been considered a mere design consideration which fails to patentability distinguish over Fornara.

Regarding claim 15, Fornara does not expressly disclose that the shower head (52) remains functional following withdrawal from the holder. However, Fornara indicates that the disclosed support can support a shower head "which can be of any per se known type" (Col 1. lines 57-58), including a mobile head that can be hand held and is connected to the water supply via a hose (Col. 1, 14-19; Fig. 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Fornara such that the shower head remains functional following withdrawal from the holder to give the user the advantage of a mobile shower head and a fixed shower head; i.e. mobility and hands-free showering, respectively. (Col. 1 at 20-24).

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Blessing (4,719,654), Heimann et al. (5,265,833), Yates (4,752,975), Grohe (US 2006/0059616).

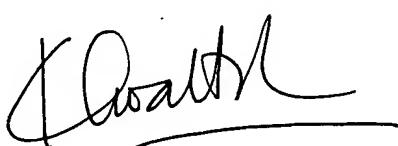
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie A. Mahone whose telephone number is (571) 272-3680. The examiner can normally be reached on Monday -Friday 8:30A.M-5 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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